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KEN WEBER, CHAIR

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**PROCEEDING OF THE BOARD OF COMMISSIONERS  
MEETING TO DISCUSS RIGHTS-OF-WAY ON FOREST SERVICE LANDS  
BOULDER, MONTANA  
COUNTY OF JEFFERSON, STATE OF MONTANA  
MARCH 26, 2007**

**Present:** Commissioners Lythgoe, Notbohm and Weber; Rick Hotalling, BLM; Gayle Joslin, FWP; Mary Figarelle, BLM; James and Evelyn Reynolds, Dorothy Lake, Paul Richards, Kathy Lloyd, Charlotte Trolinger, Jim Posewitz, George Wirt, Doug Abelin, Jeremy Allen, Denny Yanzick, Adam Allen, Matt Allen, Jim Quinlan, Ernie Kennison, Dean Yashan, Franci McMahon, Kenda Erickson, Peg Fitzmaurice, Janet Andrew, Barb Reiter, Art Powell, Dick Arnold, Alen LeMieux, Bruce Nevins, Don Harris, Ben Donaldson, Steve McCauley, James McCauley, Karen Davidson, Brud Smith, Debby Satler, Dave Hanks, Sean Sheehan, Ron Smartnik, Ted Wolny, Celia Wolny, Galen Quinlan, Carol Hanson

Commissioner Weber called the meeting to order and welcomed those in attendance. He stated that he would give a PowerPoint presentation and then would open the floor for discussion. He then proceeded to give the PowerPoint presentation (copy on file in the Clerk and Recorder's office) and called for comments.

Kathy Lloyd stated that she is opposed to the draft resolution in its entirety. She feels that the Commission should scrap this project and focus on more important matters. Kathy stated that the Commission is trying to fix a problem that doesn't exist, noting that access to mining claims is guaranteed. She also said that control by the county makes timber harvest more difficult. This plan will burden taxpayers with many more travel routes. Kathy further stated that the Commission's use of metal mines funds is very likely illegal. She is extremely disappointed that the Commission has not provided a way for citizens to have input for the use of these funds.

Sean Sheehan stated that he agrees with Kathy. He asked, if the worst case scenario is realized and the Commission decides to go through with this, what is it going to cost us and how will they deal with roads on private land. Commissioner Weber stated that this can't be answered fully yet; they will know more as the process develops. Commissioner Notbohm stated that regarding private land, if there is a public access, that is the way it is going to be. Sean stated that he can think of at least three old roads across his property, and he only owns 34 acres. These are

probably 150-year-old roads that haven't been used in 100 years; are these going to be opened? Commissioner Weber stated that the purpose of this meeting is not to pick certain roads, but to discuss the resolution and discuss ideas. If the Commission decides to pursue this, they will then have to take this road by road and make decisions. The key with RS2477 is a right-of-way that has already been granted. He can't give specific roads at this meeting, and that is not the purpose of the meeting.

Charlotte Trolinger stated that she would echo the last two comments. She asked why the Commission wants to take over rights-of-way when the land accessed is under the control of someone else. Commissioner Weber stated that the question of whether there can be mining or timber harvest or recreation is secondary to why they are doing this, which is they feel it is their duty to do so.

Bruce Nevins stated that he backs the Commission one hundred percent. All roads should be left to the County to decide. The Forest Service is closing roads that have been around 100 years. Access to forest lands is important.

Doug Ablin stated that this is a good move, just in the fact that they are preserving the ability to make decisions on access.

Jim McCauley stated that he is a former Commissioner, having served from 1985 to 1991. He is also a former chair and member of the hard rock mining impact board. As for the road issue, he probably has a better perspective than most of what happened in Jefferson County. When he was a Commissioner in 1985, Jefferson County had no road book. MCA has required from day one that county road records be kept in the Clerk and Recorder's office. In 1986, the Commission established the official road book, containing road descriptions and a matching map, and have continued to compile the records since then. Jim stated that they found petitions, deeds, etc., that had been in the courthouse basement since the county seat moved to Boulder. Now, there is pressure from the federal government to close roads and they need to act. This is why it is important to do what the Commission is attempting. They need to continue with the research. He feels that the Commissioners have the responsibility to continue with this until it reaches a conclusion. Once it is done, there will be no problems, as people can look at the book in the Clerk and Recorder's office. This will also help the court system determine right-of-way.

Jim stated that the second thing he wanted to comment on is the funding to accomplish what the Commission is trying to do. He helped establish the criteria for use of metal mines funds. In 1986, the state was holding the impact fees and skimming off the interest. He and two others worked to get the money to the counties. Since then, Jefferson County has probably doubled the money by having it here and being able to keep the interest. As for the legality, when the allocation was set up, a portion is left at the Commission's discretion for economic development or debt reduction. Jim stated that he can assure those in attendance that if he went before the Hard Rock Mining Board today and asked if it is permissible to use metal mines funds to research rights-of-way, these rights-of-way being important as they contribute to the county, he can assure them the use of this money is legitimate.

Sam Samson stated that since he spent several years of time and effort on the subject of the meeting, he feels that he needs to comment. He spent many hours with historians, the Forest Service, Fish, Wildlife and Parks, Bureau of Land Management, going over maps, talking with old-timers and driving with the GPS unit. He feels that this resolution is unnecessary; all of the action items are on-going and the "whereas" points are statements of fact. The costs are incomprehensible. He also wants to protect public access. It is a false assumption that there are many more roads out there to find, that were taken illegally, that RS-2477 is a magic bullet. His resolution to this is to build strong relationships in order to accomplish more through cooperation. He feels that a positive approach is always better. He closed with a request that someone grade the road past his house.

Matt Allen stated that he supports the Commission. The reason why is that he has watched access go right down the toilet. What he sees from cooperation is less and less roads. Any time the Commission and county government can take over access, it is a good thing. He hopes that by doing this, some of the road closures will end.

Ernie Kennison thanked the Commission for the opportunity for these meetings. He has been a citizen of Boulder for almost a year, and has had a chance to read and research this issue. He continues to hear valid points on both sides. He noted that so much of what people have done to take a position is because they love this county so much. It is not hard to see why; it is a beautiful place. He can't add much, but to reinforce the county's obligation to keep access open. It may be important for reasons that they can't even imagine at this time. Ernie stated that he wants to thank everyone who has come forward; the Commission needs to hear all comments.

Art Powell stated that he agrees with Ernie; all of them love this county. He supports the resolution. He noted that if you look at a map from 1987 and 2007, the change is dramatic. This county is rich in natural resources, and it is important to identify and facilitate agriculture, mining and timber harvest. They need to protect these things.

Paul Richards thanked the Commission for the hearing, and said that there seems to be some question of getting the cart before the horse. He asked about the contracts for consultants and how much they will cost. Commissioner Weber stated that they have a contract with Environomics and about 40 hours have been billed so far. Paul stated that he doesn't know how large this project is and if it needs to be bid or not, but noted that the County usually goes out for a bid. He has seen that Jim McCauley and Sam Samson have done extensive research. He noted that there are three full-time Commissioners that aren't doing the work, and questioned what they are paying them for. He stated that \$65/hour is ridiculous and cases such as this are usually laughed out of court. If the Commissioners open access to everything, they will see denuded hillsides.

Allen LeMieux stated that he has been here since 1959, and was County Attorney for a long time. He asked what facts the Commission had to go ahead with the program. All they have offered is an example of some range blocked near Clancy. Allen asked if they plan to spend

\$140,000 on this project. Commissioner Weber answered that this may be possible. Allen stated that it is clear to him that the Commission is determined to go ahead with this. He has one suggestion however; rather than try to take authority over all of the roads, pick one and see if it works. He asked if the Commission has a list of roads that they really want to take authority over. He stated that he read the article in today's paper, and he can't agree more with the problems outlined. Allen again suggested that the Commission take one road to the Forest Service and see what happens. Commissioner Weber stated that he wanted to assure them that the Commission will take this one road at a time.

Dick Arnold stated that he is a lifetime resident, and he agrees that the citizens of Jefferson County should have a bigger say in this.

Gayle Joslin stated that she is a wildlife biologist with Fish, Wildlife and Parks and a lifetime resident of Jefferson County. She said that it is important for her to be on record in support of the travel plan. FWP has been involved with the Clancy/Unionville travel plan since the beginning. There were fourteen public notices over the years giving opportunity for public input. FWP has assured access is maintained and hunting access through the block management plan. She noted that the Commission made no comment or protest during that period. FWP is a steward of habitat; many streams in the area are impaired due to run-off. FWP strives to maintain hunting access. She stated that she would leave information regarding the affect of recreation on wildlife. Gayle stated that she wants to be on record as opposed to the plan. Commissioner Weber asked Gayle if she was speaking for herself, or for FWP. Gayle stated that she is in attendance as a FWP representative. Commissioner Notbohm stated that the Clancy/Unionville project has been going on for some time. This is not a travel plan, but a roadless plan. He took a ride with Forest Service staff and was told that one more gate would be put up. The Commission recently received notice that four more gates are going up. Every place that he used to hunt, he can't access any more, due to physical disabilities.

Dee Anna stated that since the Commission is holding three public meetings that they are still open to input. She said that she served eight years on the Wyoming Water Quality and Toxic Waste Board. She stated that she could understand a plan that would provide for access, but she doesn't see a plan. She hopes that the Commission will take everyone's concerns to heart, and asked when the Commission plans to act on the resolution. Commissioner Weber stated any written comments are welcome and said that the final vote on the resolution is not on an agenda yet.

Barb Reiter stated that she appreciates the meeting. She has gotten the impression from articles that this is a done deal, and she hopes that the Commission is still open to the input that they will be getting. Barb said that something that alarmed her is the mention of a petition in support of this. Commissioner Weber stated that the Commission received a petition some years ago that basically reiterated the RS-2477 sentence. The petition contained approximately 1300 signatures, but was not an official petition as it was not submitted to the Clerk and Recorder and the signatures were not verified. Barb stated that she is concerned that the whole process has gotten to this point without a plan and community involvement. She noted the differences of

opinions and the wisdom of elders that have been heard at this meeting.

Commissioner Weber stated that the ideology of why - elk, cutthroat, handicap access, mining - is less in his mind than what it is the Commission's responsibility to do. He had no knowledge of RS-2477 when he came into office. Then the governor was asked by President Bush to formulate a response regarding roadless areas and roads. The governor went to the counties and he started to do research. At first, he thought that the County had no right, but he found that the Commission has a right and responsibility to exert control on roads. They are not taking anything, they are looking for roads that have already been granted. The Commission, for whatever reason, didn't keep track of this. It comes down not to ideology of wilderness, etc, but that by law, the Commission has a responsibility to do this. He loves to hear from all the ideological groups, but it comes down to - bottom line - what our responsibility as Commission is. He apologizes if this sounds like their minds are made up.

Barb stated that she doesn't agree with the process and would ask that it be made more collaborative and move forward. Commissioner Lythgoe stated that he was probably the most resistant to take this on, but over time he has come to realize that this is part of the job. The one thing that concerns him the most, and he is not going to blame past Commissions, as he sees agencies continue to close roads and the public no longer have access, he wonders if past Commissioners should have been acting and didn't. Just because past Commissions didn't do anything doesn't mean that this Commission shouldn't. He has come to the conclusion that it is in their job description to deal with this. Commissioner Notbohm stated that when Commissioners were installed in Montana, first and foremost on their position description was to deal with roads. And, it was not too long ago that Jefferson County Commissioners were the road foreman in their districts.

Jim Posewitz stated that he has lived in Montana for 54 years. He is glad to see the subject of history brought up. He noted that they are in a building erected before the Forest Service was in existence. President Theodore Roosevelt gave us the forest system and set aside lands for forest. He said that there is no place in the Clancy/Unionville area that he can't walk into and out of on any given day with his artificial knee. As a 72-year-old, he knows that it won't be long that he can walk in and out, but he hopes that his generation is not so selfish as to deny wilderness to future generations.

Brud Smith stated that through the questions and comments, he really understands the commitment and responsibility of what the Commission is trying to do, but he feels that it has gotten out of hand. In the Hadley Park case, his client took on the Forest Service, and the County came in on the end of the case. He questioned how much money was spent on this one case. He stated that the end of the process is litigation, and every person is innocent until he is proven broke. Allen LeMieux had a good idea; try one road and see what happens. The BLM and Forest Service aren't going to roll over because we say so. There are some huge hurdles, such as how to keep access. He feels that the Commission needs to think this through.

Commissioner Lythgoe stated that he thinks that because there have been so many meetings

regarding this, although not at night, that sometimes when they do that, people can get the wrong impression of what they are trying to do. The Commission did consider a blanket resolution, but they have tabled that idea. They will take this on a road-by-road basis, which is one reason that they can't put a dollar amount on the project. Also, the Commission has sat down with both Forest Supervisors and have gotten assurances that if the Commission can present proof that a road is ours, they can deal with it on a local level. He has never felt that they should be presenting the Forest Service with a whole list of roads and saying - these are ours, deal with it. Commissioner Weber noted that they are not saying that every one of these rights-of-way needs to be opened. He is sure that there are some they will agree need to be abandoned. Just because they are looking at a road, doesn't mean that they feel they need to be open; it is our responsibility to look at them however. Brud stated that litigation can be very costly. Commissioner Lythgoe stated that they don't want to litigate. Commissioner Weber said that they have asked all of the agencies involved to help them avoid litigation.

Franci asked for clarification of the Hadley Park case, which Brud provided. Franci stated that when talking about access, it is important to make the distinction between vehicular or human. Also, roads may only be closed for certain times of the year.

Commissioner Notbohm stated that there have been all of these closures in the county, but never has the Forest Service or BLM come to the Commission and presented proof that the roads were theirs. He noted that the Forest Service is not in the road building business, and they usually use existing roads. He said that there are two ways to legally close a road, and this has not been done.

Galen Quinlan thanked the Commission for allowing them to be heard. He stated that he supports the Commission. He grew up here and he has seen access limited during his lifetime, and he honestly can't see that some of these closures have been in the best interest of the residents.

Dorothy Lake stated that she knows a lot of this is taking place in her area. All her accesses to her grazing lands have been closed. She stated that it is okay to close the roads, but asked that they at least leave it so that she can ride a horse up there.

Adam Allen stated that he is a fifth generation Montanan, and asked what good it does to preserve the land if you can't get to it. He said that he can strap on a backpack and hike in, but wants to be able to take his children in and he can't carry them and they are too young to hike themselves. He also stated that he is in the exploratory mining business. There have been times where they have to go in and make a new road, when two feet away is an existing two-track that has been closed. This is just an unnecessary, added expense.

Peg Fitzmaurice stated that if they have already expended \$26,000, they have already made a commitment. She said that she has in the past come to these types of meetings and heard the Commission speak to the purpose of the meeting, and it is usually the opposite of what her perception is. She asked the Commission's plans after they take the road. Commissioner Weber

stated that he is not going to suggest that the Commission take over the responsibilities of agencies on their lands; those are their responsibilities. The underlying question is if these rights-of-way were granted to the public and, if so, if they are under our jurisdiction. The answer to both questions is yes. Once a right-of-way is granted, it can't be closed without going through the process. If a right-of-way is already granted, it falls to the Commission to deal with it. Commissioner Lythgoe stated that they are not suggesting that if they are successful they will be maintaining all of these roads. Charlotte stated that this is where she keeps hearing a cognitive disconnect; it is the County's responsibility to maintain the roads. Commissioner Weber stated that, by law, they do not have to be maintained.

Allen LeMieux asked if the Commission goes ahead and gathers some roads, what will happen, what will be new. Commissioner Lythgoe stated that some gates could come down. He stated that some of the ways that the Forest Service has closed roads is by piling rocks and dead fall across the road; this would be removed. Commissioner Weber stated that the short answer is that they aren't trying to gain what we don't have now.

Franci stated that she can see the Hadley Park issue as one that can speak to a lot of concerns. There is a gate on the road, but there is still pedestrian and horse access; to think that we can only get somewhere by truck is small thinking. Since Champion Pass has been improved, she see RV's all over the place; they are not staying in the campground. Commissioner Notbohm stated that it is not only what happened to Dorothy; every time he goes out he sees another gate or another sign.

Dick Arnold stated that the County has to identify County roads and the county wants to be involved. However, the word on the street is that it doesn't matter; we will be shut out of the Forest Service eventually. He also can't access the forest as easily any longer.

Shawn posed a question to Jim McCauley and Sam Samson regarding Rowe Gulch. He asked if this road was petitioned to be closed while they were in office. Jim stated that it was. He asked if any roads in the Elkhorns were petitioned to be closed for the Elkhorn travel plan. Sam answered not under MCA.

Brud Smith stated that first a road has to be established as a county road. RS-2477 was put in place for homesteaders and miners. There are four ways that a road can become a county road, and one way is prescriptive; this is a hard task. You need to go back to before the turn of the century. Commissioner Weber stated that there is record of one road in the Elkhorns that the Forest Service came to the Commission and petitioned them to move the road.

Dean Yashin stated that he wanted to voice his objection to the way things are going with the process. He feels that a lot of what the Commission is doing will delay beneficial projects in the future. There are financial concerns associated with access, and this could hinder further forest planning. He stated that they use the road to hunt, fish and ride horses, and he can't see where there are any access issues.

Kenda Erickson thanked everyone for coming. She stated that normal Commission meetings are not really public meetings because no one is there. She feels that the Commission is putting the cart before the horse. They are using this money, but they are getting paid and should be doing this job themselves. When she looks at the resolution, she wonders how much each "whereas" cost us. She has been told that the Commission doesn't have evening meetings because no one will come. The Commission usually has a meeting, makes a decision and then has a public meeting. She has no confidence in any of the Commissioners.

Allen stated that he hears a lot of anger towards the Forest Service due to closures, but they give a large amount of money in lieu of taxes. He said that he would also like to see the County Attorney and federal agencies at these meetings. Commissioner Weber noted that Rick Hotaling with the BLM is in attendance. Rick Hotaling, BLM, stated that the Forest Supervisor for the Helena National Forest plans to attend the Montana City meeting, and the Forest Supervisor for the Beaverhead-Deer Lodge National Forest plans to attend the Whitehall meeting.

Jeremy Allen stated that he is recently disabled. He has seen roads close and the elk population decline. If they are closing the road to help the elk population, he isn't seeing it.

Celia Wolny said that there are a lot of concerns regarding the use of metal mines monies. She was walking with a friend's dogs in the woods near the Free Enterprise Mine recently, and there was so much garbage and graffiti. Her concern, if they open the roads, is this is what we will get - vandalism and party places. If what it takes to keep the forest nice is to close the roads, she is all for it. Commissioner Weber stated that everyone says how they love beautiful Jefferson County. When the Commission has been out with the Forest Service, they saw closed roads that people still managed to bring garbage into.

Steve McCauley stated that he supports the Commission. He thinks what the Commission is trying to do is bring local authority back. He understands that they can't put a dollar figure on this, but they are trying to do their job. He sees trash too, but he doesn't see that as justification. There has always been garbage, since he was a child; it is just something to deal with.

Commissioner Weber thanked everyone for attending. He said that it may seem that the Commission doesn't want input, but they do.

Commissioner Lythgoe moved to adjourn. Commissioner Notbohm seconded. The motion carried.

## **MEETING ADJOURNED**

### **ATTEST:**

March 26 2007 r-o-w minutes.wpd



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**BONNIE RAMEY**  
**CLERK AND RECORDER**

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**KEN WEBER, CHAIR**

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**TOMAS E. LYTHGOE, COMMISSIONER**

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**CHUCK NOTBOHM, COMMISSIONER**